

**FILED**  
JANUARY 8, 1985

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :

PHILIP M. POTACCO, D.C. :

TO PRACTICE CHIROPRACTIC :  
IN THE STATE OF NEW JERSEY :

Administrative Action

FINAL DECISION AND ORDER

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This matter commenced on July 13, 1984 with the filing of a Complaint by the Attorney General with this Board charging respondent Philip M. Potacco, D.C., with having been convicted in Federal Court for the District of New Jersey of one count of defrauding insurance companies of more than \$5,000.00. To this charge, respondent, represented by Michael Kessler, Esq. entered a plea of nolo contendere.

Final hearing of this matter was held on December 12, 1984 before the Board. Deputy Attorney General Peter A. Greene presented the proofs on behalf of the State. Respondent appeared with counsel, submitted a letter of mitigation and presented testimony on his own behalf.

The Board received an Information in lieu of indictment and a Judgement and Probation Order entered in the United States District Court of the District of New Jersey in which respondent pleaded guilty to the one count indictment which charged that respondent engaged in a scheme to defraud insurance companies, knowingly transporting in interstate commerce fraudulently obtained securities having a value of more than \$5,000.00. Respondent was sentenced to a suspended term of 2 years, placed on probation for a period of 5 years, ordered to pay restitution

and a fine, and to perform 200 hours of community service.

From the testimony taken at the time of the hearing regarding penalty, and from the documents submitted, it also appears that Dr. Potacco was only in practice a short time when the fraudulent activity began in July of 1979 and that it continued through February of 1982, a period of 2 1/2 years representing the majority of his time practicing chiropractic. It was represented to the Board by Dr. Potacco that he was inexperienced and naive, and that the other actors in the scheme to defraud insurance companies played upon his greed and compassion. It was also represented that Dr. Potacco cooperated fully with the government in its prosecution of others involved in the fraudulent activity once he was confronted by the government with his involvement in the improper activity.

There is no dispute on the facts of this matter. Respondent stands convicted of one count of transporting stolen securities in interstate commerce, which involved a scheme to defraud insurance companies of close to \$14,000.00 according to the Information filed in this matter. This federal conviction properly constitutes a "crime" under N.J.S.A.45:1-21(f). The Board considers the crime to involve moral turpitude, since an intent to defraud is a central element of the criminal activity. Since the offense involved the filing of false insurance forms by respondent which represented billings for chiropractic services which were never provided, the Board also concludes that respondent's conviction relates adversely to the practice of chiropractic pursuant to N.J.S.A.45:1-21(f).

### DISCUSSION

The Board considers the crime of which respondent stands convicted to be a serious one which is intimately connected with his practice of chiropractic. Although respondent claims to have been inexperienced and naive, the Board cannot ignore that the fraudulent activity took place over a long period of time representing the bulk of his practice, that his admitted motivation for the crime was greed, and that although his cooperation with the government is to his credit, he did not volunteer the information; his cooperation was as a result of his being caught and confronted with his fraudulent activity by the government.

Most disturbing of all is that from respondent's own testimony and from a statement submitted on his behalf (which was considered by the Board only for purposes of the penalty to be considered) it appears that respondent allowed his entire practice and life to be taken over by the other parties to the insurance fraud; in essence they controlled his life and practice. His actions bespeak not just inexperience or naivete', but an extreme lack of maturity and judgment such that the Board feels a psychiatric evaluation is appropriate before respondent again is responsible for the care of patients who depend upon his judgment and actions for their well-being.

In consideration of the entire record, the Board on this

day of December 23, , 1984,

#### ORDERS:

1. That the license to practice chiropractic heretofore granted to PHILIP M. POTACCO, shall be, and hereby is suspended for

5 years with the first 2 years thereof to be an active period of suspension and the remaining 3 years thereof to be stayed and served as a period of probation. Dr. Potacco shall surrender forthwith to the office of the Board his engrossed certificate and registration which shall remain in the custody of the Board during the period of active license suspension.

2. Prior to the end of the period of suspension respondent shall be evaluated by a psychiatrist at his own expense, which psychiatrist shall be chosen by him from a list of three provided by the Board. Such psychiatrist shall be made aware of this Order and the background of this matter, and shall provide the Board with an evaluation of respondent's fitness and competency to resume practice and particularly his trustworthiness and ability to be responsible for patients. The Board suggests that psychological testing should be an appropriate component of any such evaluation.

3. Prior to the end of the active suspension, respondent shall appear before the executive committee of the Board to discuss his ability to resume active practice. At that time, and following receipt of the psychiatric evaluation, the Board will consider appropriate limitations on his practice and terms of probation.


4. Philip Potacco shall pay to the Board a monetary penalty of \$2,500.00 plus costs in the amount of \$250.00 .

5. The period of active suspension shall commence 30 days after the oral decision of December 12, 1984 to enable respondent

to make arrangements for the care of his patients. Such suspension shall begin on January 12, 1985.

BOARD OF MEDICAL EXAMINERS

BY:

  
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EDWARD W. LUKA, M.D.,  
PRESIDENT